

IN THE SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM, 1977

NO. 75-1902

BILL LUTHER,
Petitioner

v.

INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL IRON
WORKERS, LOCAL 16, WILLIAM H. HARFORD,
SR., ROBERT T. SHAFFER, JR., and JOHN
TRAYLOR,

Respondents

PETITIONER FOR A WRIT OF CERTIORARI

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PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE UNITED STATES

To the Honorable, the Chief Justice and
Associate Justices of the Supreme Court
of the United States.

Bill Luther, the petitioner
herein, prays that a writ of certiorari
issue to review the judgment of the
United States Court of Appeals entered
in the above-entitled case on March 30,
1976.

Opinions Below

The opinion of the United States
Court of Appeals for the Fourth Circuit
is a per curiam opinion, as yet un-
reported and is printed in Appendix A
hereto, *infra*, page 2.

The Judgment of the United States
Court of Appeals for the Fourth Circuit
is a per curiam opinion, as yet un-

reported and is printed in Appendix A
hereto, infra, page 1.

The judgment of the United
States District Court for the District
of Maryland is printed in Appendix A
hereto, infra, page 4.

INDEX	page
Judgment of the United States Court of Appeals.....	1
Per Curiam Opinion of the United States Court of Appeals.....	2
Judgment of the United States District Court.....	3
Jurisdiction.....	20
Question presented.....	21
Statute involved.....	22
Statement.....	29
Reasons for granting this writ.....	32

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 75-1899

Bill Luther,
Appellant

versus

International Association of Bridge
Structural and Ornamental Iron Workers,
Local 16, William Harford, Sr., Robert
T. Shafer, Jr. and John Traylor,
Appellees.

Appeal from the United States District
Court for the District of Maryland at
Baltimore, Edward S. Northrop, District
Judge.

Argued March 4, 1976

Decided March 30, 1976

Before HAYNSWORTH, Chief Judge, BUTZNER
and WIDENER, Circuit Judges.

Stephen Cohen for Appellant; Sidney Blum
for Appellees.

(1)

PER CURIAM:

Bill Luther brought the present
action against Local Number 16 of the
International Association of Bridge
Structural and Ornamental Iron Workers
alleging that he had been wrongfully
denied the right to reinstate with the
local after he had moved into the
geographical area covered by Local
Number 16 and begun performing work there.
He had earlier been a member of Local
Number 384 of the same union, but had
been suspended for nonpayment of dues.

Without first settling his
financial accounts with Local 384, we
think Luther had no standing to maintain
this action against Local 16 for the
reasons stated in the opinion of the
district court. Luther v International
Association of Bridge Structural and
Ornamental Iron Workers, et al. No. N-

74-711 (D.Md. June 24, 1975). Accordingly,

(2)

the judgment is affirmed.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BILL LUTHER

v.

INTERNATIONAL ASSOCIATION OF
BRIDGE STRUCTURAL AND ORNAMENTAL
IRON WORKERS, LOCAL 16, WILLIAM
H. HARFORD, SR., ROBERT T.
SHAFER, JR., and JOHN TRAYLOR

CIVIL ACTION NO. N-74-711

Filed: June 24, 1975.

Stephen Cohen and Stanley H. Miller,
counsel for plaintiff.

Sidney Blum counsel for defendants.

Northrop, Chief Judge.

Plaintiff, Bill Luther, has
brought this action for compensatory
and punitive damages against Local 16
of the International Association of
Bridge Structural and Ornamental Iron
Workers, and William H. Harford, Sr.,
Robert T. Shafer, Jr., and John Traylor
(respectively the Vice-President,

Business Manager and President of Local 16 during certain periods relevant hereto), under the provisions of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. § 401 et seq. Plaintiff alleges that he was wrongfully denied reinstatement in Local 16, and that as a result he was denied the right to participate in various actions taken by the local union membership relating to the election of officers and the negotiation and administration of collective bargaining agreements between the defendant local union and plaintiff's employers, in violation of 29 U.S.C. § 411. Plaintiff, however, does not seek reinstatement in Local 16 at this time, but rather seeks compensatory and punitive damages for the alleged violation of his rights. The jurisdiction of this Court is invoked

pursuant to 29 U.S.C. § 412.

Having previously filed their Answer to the complaint, defendants have now filed a motion to dismiss the complaint on the following grounds: 1) that it fails to state a claim upon which relief can be granted inasmuch as plaintiff lacks standing to assert a right of action under the LMRDA; 2) that the issuance of a work permit is not properly within the purview of the LMRDA; and 3) that inasmuch as punitive damages are not recoverable under the Act, the complaint fails to contain a sufficient allegation of jurisdictional amount. Finally by way of a special plea, defendants have asserted that any claim for loss of wages prior to July 5, 1974, the date of the filing of the instant complaint, is barred by Maryland's three-year

statute of limitations, MD. ANN. CODE, Cts. & Jud. Proc. § 5-101 (1974). In the Court's view of the instant case, only the first of the grounds raised need be discussed and decided herein.

Prior to proceeding, however, the Court wishes to clarify the present procedural posture of this case. At the hearing on defendants' motion to dismiss the Court indicated that it felt that the motion should more properly be treated as one for summary judgment pursuant to Fed. R. Civ. P. 56. This was because defendants had already filed their answer prior to filing the instant motion. Moreover, in ruling on the motion the Court intended to consider not only the admitted facts contained in plaintiff's complaint, but also the agreed facts set forth in the Pre-Trial Order entered herein. See Fed. R. Civ. P. 12 (c).

Although apparently agreeing with the Court in principle, plaintiff nevertheless requested the Court to continue to treat the motion as one to dismiss. Thus, plaintiff specifically requested that the Court provide him with an opportunity to file an amended complaint alleging alternative jurisdictional grounds if it was going to grant defendants' motion. The Court at that time acceded to plaintiff's request and indicated that the complaint would be dismissed with plaintiff being granted 15 days within which to file an amended complaint.

Plaintiff has now indicated to this Court, however, that he no longer wishes to file an amended complaint, but rather wishes to appeal this Court's decision on defendants' motion as being one for summary judgment, as it origin-

ally intended to do.

The relevant undisputed material facts are that in 1958 plaintiff was a member of Local 384 of the International Association of Bridge Structural and Ornamental Iron Workers in Knoxville, Tennessee, possessing membership Book No. 470453. In that year, however, his membership in Local 384 was suspended for non-payment of dues.

Having moved to the Baltimore, Maryland area, plaintiff was subsequently issued a work permit by Local 16. He continued thereafter to obtain work through Local 16 until January 10, 1974, when that permit was revoked. He was not, however, at any time able to participate in the election of union officers or in the negotiation and administration of the collective bargaining agreements entered into

between the local union and plaintiff's employers.

Beginning approximately sometime in 1962, plaintiff initiated inquiries as to his reinstatement as a full union member in Local 16. Although plaintiff was allegedly led to believe that he would be ultimately so reinstated, and on January 10, 1974, he was informed that Local 16 would not reinstate him.

The theory underlying plaintiff's cause of action is that he is a member of the union within the meaning of 29 U.S.C. § 402 (o), and that as such he has been wrongfully denied the rights accorded union members under 29 U.S.C. § 411. He thus reasons that he is entitled to maintain the present action to enforce those rights under 29 U.S.C. § 412.

29 U.S.C. § 402 (o) defines a "member" as follows:

"Member" or "member in good standing", when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

Plaintiff's concession that he was validly suspended from union membership in 1958 clearly puts him outside the definition of "member" set forth in that section. Thus, it is apparent that he is not a "member" within the meaning of the LMRDA and consequently does not have standing to maintain an action in this

Court thereunder. See Stone v. Local 29, International Brotherhood of Boiler-makers, Iron Shipbuilders, Blacksmiths,

Forgers and Helpers, 262 F. Supp. 961, 963 (D. Mass. 1967), a case which is nearly on all fours with the instant case.

In that case, a former union member who had been validly suspended from one local union for non-payment of dues subsequently applied for readmission to another local. When his application was denied, he filed suit against the union under 29 U.S.C. § 411. The District Court, however, held that as a suspended member, plaintiff was not a "member" within the meaning of the LMRDA and did not have standing to bring an action thereunder. It consequently granted the defendants' motion for summary judgment.

Plaintiff, however, contends that as a suspended union member he had an absolute right to be reinstated to full

membership upon tender of the necessary fees, and further that there was a correlative duty, not only on Local 384, the local from which he had been suspended, but also on any other local in the International union, to reinstate him upon the proper tender of such fees.

While it is true that there is a clear distinction between "suspension" and "expulsion," the former being merely a temporary cessation of rights while the latter is a total disfranchisement, see Axelrod v. Stoltz, 264 F Supp. 536, 540 (E.D. Pa. 1967), aff'd, 391 F.2d 549 (3rd Cir. 1968) (per curiam), that distinction does not go as far as plaintiff would carry it. Thus, while plaintiff might have had an absolute right to seek reinstatement in the local union from which he had been suspended (an issue which this Court need not

decide in this case), it is not at all clear that he would have any right to be reinstated in any other local. In this regard, it is significant to note the provisions of Article 19, section 3 of the Constitution of the International union:

A member who is indebted to, or has been fined, suspended, expelled, or rejected by any local of the International shall not be eligible to membership in any local until such time as any indebtedness or fine that has been imposed has been paid to the local imposing said fine, except by permission of the General Executive Board.

That provision would seem to clearly indicate a policy on the part of the International to allow local unions to take care of their own disciplinary problems by requiring a suspended member to square away his problems with the local suspending him before he can be

eligible for membership in any other local. Such a requirement would seem directly contrary to the position which plaintiff is urging upon this Court.

In support of his position plaintiff cites Hughes v. Local 11 of International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, 287 F.2d 810 (3rd Cir.), cert. denied, 368 U.S. 829, 82 S. Ct. 51 (1961), in which it was held that a union member seeking to transfer to another local within the International union was a "member" of that local within the meaning of the LMRDA where he had fulfilled all the requirements for membership in that local. Id. at 814-15. The facts of that case, however, and plaintiff's reliance thereon is misplaced. Thus, whereas in the present case plain-

tiff's membership in local 384 had been validly suspended, the plaintiff in Hughes was a member in good standing both of the local union from which he was seeking to transfer and of the International union. Moreover, whereas the relevant provisions of the Constitution of the International in the present case would seem to clearly indicate that a suspended member must first settle his problems with the local suspending him prior to becoming eligible for membership in any other local, the relevant provisions of the Constitution in Hughes seemed to indicate that one local had no discretion in refusing to accept as a transfer member any bona fide member in good standing of another local. See id. at 815 n.4.

Thus, this Court concludes that plaintiff lacks standing to bring this action. It would seem that the proper course for plaintiff to pursue would be to seek reinstatement in Local 384. Once he has regained full membership therein, he could subsequently seek to transfer his membership to Local 16. For the foregoing reasons, IT IS, this 24th day of June, 1975, by the United States District Court for the District of Maryland ORDERED that summary judgment be entered in favor of defendants, International Association of Bridge Structural and Ornamental Iron Workers, Local 16, William H. Harford, Sr., Robert T. Shafer, Jr., and John Traylor against plaintiff, Bill Luther.

Edward S. Northrop
Chief United States
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BILL LUTHER

v.

INTERNATIONAL ASSOCIATION OF
BRIDGE STRUCTURAL AND ORNAMENTAL
IRON WORKERS, LOCAL 16,
WILLIAM H. HARFORD, SR.,
ROBERT T. SHAFER, JR., and
JOHN TRAYLOR

CIVIL ACTION NO. N-74-711

ORDER

In accordance with this Court's opinion filed in the captioned case on June 24th, 1975, treating defendants' Motion to Dismiss as a Motion for Summary Judgment and granting the same, IT IS, this 24th day of June, 1975, ORDERED and ADJUDGED that summary judgment BE and the same hereby IS ENTERED in favor of defendants, International Association of Bridge Structural and Ornamental Iron Workers, Local 16,

William H. Harford, Sr., Robert T. Shafer,
Jr., and John Traylor against plaintiff,
Bill Luther, with costs.

Edward S. Northrop
Chief United States
District Judge

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on March 30, 1976, Appendix A, *infra*, page 2. The jurisdiction of the Court is invoked under Title 28 United States Code Section 1254, (1) which provides, *inter alia*;

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

Additionally, the Ninth Amendment of the Constitution of the United States which provides;

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

QUESTION PRESENTED

The issue in this case is whether or not a suspended member of a labor union has standing to bring an action under the Labor Management Reporting and Disclosure Act when the union has by its conduct refused to allow the suspended member his absolute right of reinstatement by reason of the Union's Constitution.

STATUTE INVOLVED

The Statute involved in this case is the Labor-Management Reporting and Disclosure Act which provides:

DEFINITION

29 U.S.C. 402, Labor-Management Reporting and Disclosure Act of 1959. Section "O"

1. Member

"Where a person has fulfilled all of the requirements for membership actually prescribed by a labor organization, he is a member as defined by 29 USCS (402 (o). Hughes v International Assn. of Bridge, Structural & Ornamental Ironworkers (1961, CA3 NJ) 287 F2d 810, cert den 368 US 829, 7 L Ed 2d 32, 82 S Ct 51.

LMRDA (29 USCS (401 et seq.) does not limit right of unions to choose their members. Moynahan v Pari-Mutuel Employees Guild (1963 CA9 Cal) 317 F2d 209, cert den 375 US 911, 11 L Ed 2d 150, 84 S Ct 207.

Appellant, nonunion individual, who had not met union's requirement that there must be a two-thirds favorable vote of

current members to become a member, was not entitled to federal judicial relief. *Moy-nahan v Pari-Mutuel Employees Guild* (1963, CA9 Cal) 317 F2d 209 cert den 375 US 911, 11 L Ed 2d 150, 84 S Ct 207.

Union is not legally required to accept person for membership solely because he is qualified to become a member. *Stone v International Brotherhood of Boilermakers, etc.* (1967, DC Mass) 262 F Supp 961.

One validly suspended from union membership is not a union member within the meaning of 29 USCS § 402 (o), and consequently lacks standing to sue under 29 USCS § 412, *Stone v International Brotherhood of Boilermakers, etc.* (1967, DC Mass) 262 F Supp 961.

Term "member" is not limited to those persons who are recognized as members by labor organization, but includes those who are members in substance although not formally recognized as such. *Axelrod v Stoltz* (1967, DC Pa) 264 F Supp 536, affd (CA3 Pa) 391 F2d 549.

LMRDA (29 USCS §§ 401 et seq. recognizes right of unions to choose their own members. *Axelrod v Stoltz* (1967, DC Pa) 264 F Supp 536, affd (CA3 Pa) 391

F2d 549.

29 USCS § 402 (o) so defines "member" as to prevent a union from refusing to issue a membership card to a qualified person. *Vincent v Plumbers & Steamfitters Local* (1974, DC La) 384 F Supp 1379.

BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS

(411. Bill of rights

(a)(1) Equal rights. Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) Freedom of speech and assembly. Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly

before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings; Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(3) Dues, initiation fees, and assessments. Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on the date of enactment of this Act (Sept. 14, 1959) shall not be increased, and no general or special assessment shall be levied upon such members, except-

(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by sec-

ret ballot; or

(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and by-laws of such labor organization: Provided, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

(4) Protection of the right to sue. No labor organization shall limit the right of any member

thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: Provided, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: And provided further, That no interested employer or employer association shall directly or indirectly finance encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

(5) Safeguards against improper disciplinary action. No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a

reasonable time to prepare his defense; (C) afforded a full and fair hearing.

(B) Effect of constitution and bylaws. Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect. (Sept. 14, 1959, P. L. 86-257, Title I, § 101, 73 Stat. 522.)

STATEMENT

Bill Luther, a member in suspension from the International Association of Bridge, Structural, and Ornamental Ironworkers, and Local 384, Knoxville, Tennessee, was suspended by reason of non-payment of dues in 1958. Several years prior to his suspension, and for the period subsequent to his suspension, he worked and lived principally in the Baltimore area and in the jurisdiction of Local 16 of the International. From 1958 until 1974, Petitioner sought to reinstate as a full member in conformity with the Constitution and By-Laws of the INTERNATIONAL and was so advised by officials of Local 16 that he could effectuate such reinstatement if he would cooperate with them and be patient. Notwithstanding assurances, promises, and acts which would lead Petitioner to believe in the

good faith of Local 16, he was summarily removed from a Federal job, by the Local, in January of 1974 and advised that he could never reinstate through the auspices of Local 16 and that he would have to geographically return to Knoxville to reinstate.

On July 5, 1974, Appellant filed a suit against the International, the Local and officials thereof, requesting damages under Section 412 of U.S. 29, the Labor-Management Reporting and Disclosure Act. After pleadings were filed, Appellee-Respondents filed a motion to dismiss and on April 22, 1975, the Honorable Edward S. Northrup, Chief Judge, United States District Court of the District of Maryland, having considered the Motion as one for Summary Judgment heard argument and subsequently entered an Opinion and Order on June 24,

1975 entering Summary Judgment in favor of the Respondent.

REASONS FOR GRANTING THIS WRIT

There can be no greater indignity suffered to the working man, than the indignity of not being able to work. And to further exacerbate the crippling effect of not being able to work, the crowning indignity occurs when the cause of such is the very organization to which one belongs, the union itself. For under what right, or claim of right can a man be summarily removed from a Federal job, not by his employer, but by local union officials, in a vindictive response to the working man's desire to be reinstated? Indeed the emasculation and castration of the petitioner by the local is then amplified by the Court which has said by its deicsion that the petitioner has no standing to sue under the LMRDA, the Act known as the Bill of

Rights for Union members.

To be sure, non membership is to be distinguished from the petitioners contention that as a member in suspension he was entitled to the unions own absolute right of reinstatement upon meeting of a condition precedent, that is the tendering of the reinstatement fee.

The Ninth Amendment of the Constitution provides that...

The United States Supreme Court should allow this Writ so that petitioner may have the opportunity to expand upon his Constitutional basis and elaborate on his theory that aside from Federal action which denies due process, or State action, which denies due process, there is institutional denial of due process to be also afforded Constitutional protection.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

George C. E. —
Counsel for Petitioner